IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 60 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

FRIENDS SALT & ALLIED INDUS.

Appearance:

MR MANISH R BHATT for Petitioner

MR KIRTIKANT THAKER for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 22/12/97

ORAL JUDGEMENT (Per R.K. Abichandani, J.)

The following two questions are suggested in this application in paragraph 4 for the opinion of this Court.

"(1) Whether, the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income-tax (Appeal)

allowing the claim of the assessee under Sec. 80-HHA ?

(2) Whether, the Appellate Tribunal while allowing the aforestated claim has not erred in placing reliance on the criteria for allowance of deduction under Sec. 80-HH when the claim of the assessee was under Section 80-HHA ?"

Earlier the applicant had applied to the Appellate Tribunal for referring these two questions to this Court under Section 256 (1) of the Income-tax Act, 1961, but the Tribunal by its order dated 28.1.1997 rejected the application. The Tribunal had held that the notification issued under Section 80-HHA (2) of the Act was published on 23.6.1992 which was after the Assessment Year 1989-90 and, therefore, it could not apply in assessee's case. It is pointed out by the learned counsel for the Revenue that the said notification was given retrospective effect from 1.4.1989. It is also pointed out from that notification that as per Item No. 4 which is a residuary item referring to all other Municipalities, the distance to be computed was 8 Kms. from the limits of the Municipality and not 15 Kms. The Tribunal seems to have proceeded on the footing that the distance to be computed was upto 15 Kms. from the limits of the Municipality. Under the circumstances, the aforesaid questions arise for the opinion of this Court. We, therefore, direct the Tribunal to furnish statement of the case in respect of this case. Rule is made absolute accordingly with no order as to costs.

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